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OFFICE OF PETITIONS

In re Application of :
Zhuang et al. : DECISION ON PETITION
Application No. 10/677,099 :
Filed: September 30, 2003 :
Attorney Docket No. 14580- :
035001 :

This is a decision on the petition under 37 CFR 1.181, filed September 7, 2005, to withdraw the holding of abandonment for the above-identified application.

This application became abandoned for failure to timely file a proper response to the nonfinal Office action mailed January 10, 2005, which set a three-month shortened statutory period to respond. In the apparent absence of a timely filed response, the application was held abandoned and a Notice of Abandonment was mailed on August 26, 2005.

In the present petition, applicants stated that on May 10, 2005, they submitted an amendment and a request for an extension of time for response within the first month, which included an authorization to charge any necessary fees. With the present petition, applicants submitted copies of the amendment, the request for an extension of time, and the cover sheet, all of which contained a certificate of facsimile transmission dated May 10, 2005. Additionally, applicants submitted a copy of the sending unit's report confirming transmission.

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received by the

United States Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and,

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

After reviewing the papers submitted on petition, the amendment is considered timely filed on May 10, 2005 in response to the nonfinal Office action. Accordingly, the petition is **granted**. The Notice of Abandonment is hereby vacated. The application is restored to pending status in view of the fact that a response was timely submitted on May 10, 2005.

The \$120.00 extension of time fee will be charged to applicants' Deposit Account, as authorized.

The matter is being referred to the Technology Center Art Unit 2818.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

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